IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2006

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Civil Revision Petition (NPD) No.1339 of 2003

and CMP. No.14713 of 2003

Rajappa ... Petitioner/Tenant

Vs.

Johny D' Couto ... Respondent/Landlord

PRAYER: Civil Revision Petition filed under Section 25 of Tamil nadu Buildings (Lease and Rent Control Act) , Act 18 of 1960 as amended by Act 23 of 1973 praying for the relief as stated therein.

For Petitioner : Mr.P.B.Ramanujam
For Respondent : Mr.N.Prem Kumar

JUDGMENT

This Civil Revision Petition has been preferred against the order, dated 22.07.2003, passed in R.C.A.No.688 of 2001 on the file of the VIII, Court of Small Causes at Madras, confirming the order of eviction, dated 30.08.2001, passed in R.C.O.P.No.2187 of 1999 on the file of the XII Court of Small Causes at Madras.

2. Heard the learned counsel for the petitioner as well as the respondent.

3. It is the case of the petitioner/tenant that the respondent/landlord had filed R.C.O.P.No.2187 of 1999 before the Rent Controller for eviction on the ground of alleged 'Wilful default' in payment of rents for the period from April 1999 to September 1999. The learned Rent Controller had allowed the petition, by his order order, dated 30.08.2001. Against which, the petitioner herein had filed an appeal before the Rent Control Appellate Authority in R.C.A.No.688 of 2001. The Rent Control Appellate Authority, by an order, dated 22.07.2003, had dismissed the appeal confirming the Judgment and decree of the Rent Controller granting two months time for the petitioner to vacate the premises in question. Against the said order of the Rent Control Appellate Authority, the present Civil Revision Petition has been filed stating that both the Rent Controller and the Appellate Authority had failed to follow various principles laid down by the Courts under Section-10 (2) (i) of the Tamil Nadu Buildings (Lease and Rent Control), Act-1960. (herein after referred to as 'the act')

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4. It is the further case of the petitioner/tenant that the respondent/ landlord had miserably failed in establishing his case of 'Wilful default' in payment of rent. Further, it is stated that the respondent received a sum of Rs.5,000/- as advance and he ought to have adjusted the said amount against the allegedly defaulted rental amount and if that had been done there would not be any default in rent much less 'Wilful default' . The petitioner contends that both the Rent Controller and the Appellate Authority had failed to see that the alleged default period is only from April 1999 to September 1999 which represented six months rent alone and even after retaining one month's rent as advance as prescribed under Section 7 of the Act, a sum of Rs.4,250/- was available and the arrears for six months comes only to Rs.4,500/- and if the advance amount is adjusted towards the alleged defaulted rent, then only a sum of Rs.250/- could have been the actual 'defaulted amount', which does not even amount to one full month's rent.

5. Further, it has been stated by the petitioner that the Appellate Authority has not even considered the application for additional evidence in M.P.No.783 of 2002, which was taken up for hearing along with the main appeal. The petitioner had also made payments to cover the alleged arrears of rent at the earliest point of time, after the filing of the rent control petition and the Rent Control Authority ought to have seen that the facts of the case warranted invoking of the proviso to Section 10 (2) (i) of the Act . On the contrary, the case of the respondent is that the petitioner/tenant is liable to be evicted on account of 'Wilful default' in payment of rent for the period from April 1999 to September 1999.

6. The case of the respondent is that the petitioner/tenant has been very irregular in payment of monthly rents even after the initiation of the rent control proceedings and the petitioner has paid a sum of Rs.6,750/- on 13.01.2000, representing arrears of rent from April 1999 to September 1999. Thereafter, the petitioner had failed to comply with the statutory obligation as a tenant in payment of rents every month and in that process committed further default in payment of rents.

7. The respondent/landlord states that for the subsequent months, the petitioner paid the rent only after receipt of notices in the respective Section 11 (4) applications filed by the respondent in M.P.No.338 of 2000 and M.P.No.119 of 2001, which fact has been clearly established through Exs. R-2 to R-4. The following are the details about the payment of rents by the petitioner after the initiation of the RCOP proceedings.

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S.No	Date of payment	Amount	Period
1.	13.01.2000	Rs.6,750/-	April 1999 to December 1999.
2.	25.07.2000	Rs.4,500/-	January 2000 to June 2000 (Ex.R2).
3.	16.10.2000	Rs.2250/-	July 2000 to September 2000 (Ex.R3)
4.	03.07.2001	Rs.3,750/-	October 2000 to February 2001. (Ex.R4)
5.	04.07.2001	Rs.3,000/-	March 2001 to June 2001. (Ex.R5)

The respondent/landlord further states that the petitioner has intentionally committed 'wilful default' in payment of rents. After elaborately considering all the materials available on record including the subsequent conduct of the petitioner in payment of monthly rents the Learned Rent Controller had passed an order of eviction. Even the Appellate Authority categorically confirmed the said order of eviction after elaborately discussing about the wilful and the recalcitrant attitude of the petitioner herein. The respondent/landlord further states that the alleged claim of Rs.5000/- by the petitioner towards rental advance has been negatived by both the learned Rent Controller and the Appellate Authority. The petitioner also took out a separate application in M.P.No.783 of 2002 in the appeal to mark additional documents, namely, the alleged copy of lease agreement and the exchange of notices between the counsels. The Appellate Authority elaborately discussed all these aspects in the Judgment rendered in the appeal and had categorically held that the said Lease Agreement is non-est in law and moreover, the petitioner herein has failed to prove its existence as well as the validity. In the circumstances, the alleged claim of the petitioner relating to the advance amount of Rs.5000/- has been negatived by the Court.

8. It is further submitted by the respondent/landlord that even after the initiation of the eviction proceedings, the petitioner herein persistently committed 'wilful default' in payment of rents for the subsequent periods. The petitioner is not regular in payment of rents even during the pendency of the R.C.O.P. The petitioner used to pay the rents only after receiving notices in the Section 11

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(4) applications before the Learned Rent Controller. Therefore, such a chronic defaulter cannot seek any indulgence from this Honourable Court. The petitioner herein having failed in both the courts below on merits, has deliberately filed the above Civil Revision Petition solely with the intention to harass him. It is further stated that the respondent is eighty years old and the petitioner knowing fully well that the petitioner has no case on merits, has preferred this Revision Petition only with a view to cause severe hardship to him at this old age.

9. It has not been disputed by the petitioner that the agreed monthly rent was Rs.750/- per month. Further, the petitioner has also admitted that there was default in payment of rent. However, the advance amount of Rs.5,000/- lying with the respondent/ landlord was sufficient to cover the arrears of rent. The proviso to clause (a) of Section (1) to Section (7) of the Act states that " provided that the landlord may receive, or stipulate for the payment of an amount not exceeding one month's rent by way of advance. Therefore, his contention is that the remaining amount of Rs.4,250/- , out of the Rs.5,000/- received by the respondent / landlord should have been adjusted towards the alleged arrears of rent. He further contended that neither the rent controller nor the Appellate Authority had applied the proviso to Section 10 (2) (i) of the Act which provides that if the rent controller is satisfied that the "tenant's default to pay or tender rent was not wilful, he may, notwithstanding anything contained in Section-11, grant the tenant a reasonable time, not exceeding 15 days, to pay or tender the rent due by him to the landlord upto the date of such payment or tender, and on such payment or tender the application shall be rejected.

10. The petitioner has further stated that he was ready and willing to pay the defaulted amount on the first hearing date of the Rent Control proceedings. Therefore, even if there was a default in payment of rent it would not amount to ' Wilful default' on the first hearing date. ie. On 10.12.1999.

11. The Rent Controller, after going through the evidence, both documentary as well as oral, had come to the conclusion that the default committed by the petitioner / tenant amounts to 'Wilful default' and there is no evidence to prove that an advance amount of Rs.5,000/- had been received by the respondent / landlord. The Rent Controller has further relied on the following cases :-

a. In B. Anraj Pipada Vs. V.Umavel (1998-3 L.W weekly.page 159,)

> "when petition to evict the tenant on the ground of wilful default is filed, one would expect the tenant to pay the rent regularly at least after initiation of the proceedings. Failure to pay rent regularly even during the proceedings, held. Will amount to wilful default."

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b) The M.L.J Reports 1998 Page 748.

> "It is needless to say that there is legal obligation on the part of the tenant to tender the rent to the landlord month after month, whether there is any demand for it or not. If he wants to displace this legal obligation he must prove it by acceptable documentary or oral evidence."

c) 2000 (1) M.L.J Page 535.
M.Balu Vs. K.Jawahar and others

> 'The finding that the tenant has committed wilful default is a finding of fact and the tenant has the entire burden to prove that he has paid rent for the period. The burden has not been discharged by the tenant. Merely because police complaint is filed alleging that Landlord has taken away all the rent receipts it cannot be presumed that he paid rent.'

12. In all the above cases, it was held that the rent has to be paid month after month and as held in 2000 (1) M.L.J Page 535. (M.Balu Vs. K.Jawahar and others) the subsequent conduct of the tenant can also be taken into account to decide the issue of 'Wilful default' . Based on the facts available on record and the case laws cited, the Rent Controller had come to the conclusion that there was 'wilful default' and aggrieved by the same the petitioner / tenant had filed an appeal before the Rent Control Appellate Authority in R.C.A.No.688 of 2001. The Rent Control Appellate Authority by an order, dated 22.07.2003, confirmed the findings of the Rent Controller with regard to 'Wilful default' and ordered eviction granting two months time for the petitioner / tenant to vacate.

13. The learned counsel for the petitioner relied on the following decisions to support his contentions :-

a) In K.Narasimharao Vs. T.M.Nasimuddin Ahmed (1996 (II) CTC 78) wherein the Supreme Court held as follows :-

> " With regard to Section 7(2)(b), Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 that the landlord is entitled to receive only one month agreed rent by way of advance and any amount paid in excess of agreed rent of one month by way of advance shall be refunded by landlord to tenant or adjusted towards rent, since it is only for the benefit of the tenant. The landlord is not entitled to claim eviction of tenant on ground of 'Wilful default' when he was having excess amount of advance . In such a case, the landlord is bound to adjust excess amount of advance towards rent due from tenant.

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> ......
> It is clear that this excess amount available with the landlord is only for the benefit of the tenant, the liability to refund the amount to the tenant being immediate unless the tenant exercises the option to get it adjusted otherwise. The character of the excess amount undoubtedly is that it is the tenant's money in the hands of the landlord for return to the tenant or for adjustment towards the dues of the tenant, at the tenant's option. Any other stipulation in contravention to it has no legal effect being null and void..... The provision of adjustment of the excess amount at the option of the tenant clearly visualise its adjustment towards the rent due from the tenant since the jural relationship envisages payment only of rent by the tenant to the landlord towards which it can be adjusted."

b) The above view of the Apex Court was relied upon by a learned single Judge of this court in the case of In Mahalingam Vs. Pichaiammal [(2000) II M.L.J.202] wherein it has been held as follows:

> ".....excess advance paid to the landlord by the tenant is liable to be adjusted in the rent payable by the tenant as and when becomes due even without any demand from the tenant. "

14. On the other hand, the learned counsel for the respondent relied on the decision reported in 1998 (2) MLJ 745, wherein the learned single judge of this court held as follows:

> " a) ..... It is needless to say that there is legal obligation on the part of the tenant to tender the rent to the landlord month after month, whether there is any demand for it or not. If he wants to displace this legal obligation, he must prove it by acceptable documentary or oral evidence. ..... Mere payment of the entire arrears of rent by the tenant on receipt of summons on date fixed for appearance of the tenant in court would not absolve him of disqualification which he had already suffered . Therefore, the petition for eviction on ground of 'wilful default' cannot be sustained on that account."

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b) In the case of B.Anraj Pipada Vs. V.Umayal reported in 1998 (3) LW 159, wherein this Court held as follows :-

> ".....When the eviction proceedings have been initiated on the ground of wilful default, one would expect the tenant to pay the rent regularly every month at least after the initiation of the proceedings. When the tenant has failed to pay the rent regularly even during the pendency of the proceedings, then there is no doubt that his conduct in paying the rent as he likes, will amount to wilful default."

c) Also in the case of M.Balu Vs. K.Jawahar and others (2000 (1) M.L.J 535,) wherein this Court held as follows:-

> "In an eviction petition on the ground of non-payment of rent amounting to 'Wilful default'- subsequent conduct of the tenant can also be taken into account. The finding that the tenant has committed 'wilful default' is a finding of fact and the tenant has the entire burden to prove that he has paid the rent for the period."

d) In the case of P.Vasuvaithiar Vs. R.M.Rangoo Chettiar (2000-2-LW.708) wherein this Court held as follows :-

> "Tamil nadu Buildings (lease and rent control) Act (18 of 1960) ,S.10(2)(i)/Wilful default- Statutory obligation on the part of the tenant to pay rent every month according to the agreement - In case tenant is not paying rent as per agreement he is a defaulter- Even if he had paid rent during the course of proceedings it cannot absolve him for contending that he is not wilful defaulter - When litigation is pending he should have been more careful to discharge the statutory obligation - After taking false contention that he had paid entire arrears the payment of arrears in the course of proceedings shows want of bona fides and that he is "wilful defaulter"

e) In the case of Raminder Singh Sethi Vs D.Vijayarangam ((2002) 4 Supreme Court cases 675,) wherein it has been held as follows :-

> "Every tenant is obliged to pay or tender rent to the landlord within 15 days of the month to which the rent relates. The purpose of advance rent is to protect the landlord from an unscrupulous tenant who may run into arrears and vacate the premises and comfortably walk away with the arrears unpaid. The advance rent is available for adjustment or is liable to be refunded at the time of vacating of the

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premises except where the law or the contract between the parties provides to the contrary. "

f) In the case of R.Murugan Vs. M.O.M.Abubucker reported in (2005) 5 CTC 473 this High Court has held as follows :-

"Following Raminder Singh Sethi Vs. D.Vijayarangam, 2002 (4) SCC 675, the learned single judge of this Court has held that ..... the mere fact that the landlord had with him an advance amount does not mean that the tenant has not committed 'wilful default' within the meaning of Section 10(2)(i) of the Act. The Courts below have rightly negatived the submissions made on behalf of the tenant that in view of the advance amount there is no wilful default. Broadly looking into the matter, it is a clear case of wilful default and the order of eviction passed by the Courts below on the ground of wilful default is to be endorsed with."

15. Relying on the decided cases cited by the learned counsel for the respondent/landlord and based on the facts of the case, it is clearly found that the petitioner / tenant has committed 'wilful default' as alleged in the eviction petition filed by the respondent/landlord, especially, in view of the fact that the petiioner/tenant could not prove the existence and the validity of the alleged lease agreement to the satisfaction of the Rent Control Authorities. Therefore, in such circumstances , the claim of the petitioner/tenant with regard to the advance amount of Rs.5000/- being with the respondent / landlord could not be established. Even if that be true, the necessity of the respondent/landlord adjusting the same towards the rental arrears due from the petitioner/tenant did not arise as there is nothing shown to prove that the respondent/landlord was required to do so either in accordance with the prescribed provisions of law or on the request of the petitioner/tenant. Moreover, taking into account the subsequent conduct of the petitioner/tenant, it is seen that he has continued to commit default in payment of rents even after the initiation of the rent control proceedings.

16. On a careful consideration of the rival contentions put forth by the learned counsel appearing for the petitioner as well as the respondent and on a perusal of the materials available on record and for the reasons stated above, this court is of the considered view that there is no legal infirmity or material irregularity in the order, dated 30.08.2001, passed by the Rent Controller in R.C.O.P.No.2187 of 1999 and confirmed by the Rent Controller Appellate Authority by order, dated 22.07.2003, in R.C.A.688 of 2001. Therefore, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected civil miscellaneous

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petition is also dismissed. The petitioner is granted three months time to vacate the petition premises.

ssm

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1) The VIII Judge, Court of Small Causes, Madras-104.

2) The XII Judge, Small Causes Court, Madras-104.

Copy To: The Registrar, Small Causes Court, Chennai-104.

+ one cc to Mr.P.B.Ramanujam, Advocate Sr.No.13754.
+ one cc to Mr.V.Prabakaran, Advocate Sr.No.13856.

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